UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/41
1 February 2000

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 11 (a) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: TORTURE AND DETENTION

Written statement submitted by the Romanian Independent Society of Human Rights (SIRDO), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 December 1999]

1. In exercising its role of militating in favour of human rights and fundamental freedoms, SIRDO has informed the responsible authorities (police, prosecutor's office, courts) regarding certain acts (cases of torture, inhuman or degrading treatment, the infringement of the presumption of innocence, the infringement of the right to a defence, etc.), requesting the acknowledgement of these abuses, on the basis of the confessions and relevant documents existing for each case, and has also requested the adoption of the measures necessary for the rehabilitation of victims subjected to torture and ill-treatment. The activities of SIRDO, serving the fundamental principle of finding out the truth, take place within a working system established with the Special Rapporteur on the question of torture, some 54 cases being transmitted to him from among the multitude that have been brought to our attention.

2. The analysis elaborated by SIRDO, based on reports of petitioners and investigations made in individual cases, some of them also supported by forensic documents, shows serious irregularities in the arrest and investigation procedures of the police and the penitentiaries. Our conclusions are the following:

(a) During criminal interrogations, the authorities resort to serious acts of physical and mental torture, with a view to forcing the suspect to acknowledge his/her guilt or deeds whose authors have not been identified;

(b) The effect of these acts of violence is to infringe the physical and mental integrity of the person and even to jeopardize the right to life itself, which diminished the physical and intellectual capacities of the individual needed to support and defend his legitimate interests in the sphere of human rights and freedoms;

(c) Prolonged periods (months, even years) of detention without trial are traumatizing for the detained persons;

(d) The suffering of victims of torture and inhuman or degrading treatment is also felt in the micro-social environment (family, relatives, friends, colleagues and acquaintances of the victim).

3. The mass media have often pointed out cases in which persons in the custody of the military authorities (the Romanian Police, the General Direction of Penitentiaries), who were deprived of their liberty, have been subjected to acts of torture and humiliation, committed without interference.

4. In support of the above-mentioned statements, SIRDO can also identify complementary negative factors, namely:

(a) The application of excessive penal sanctions which render inoperable the proper functioning of penal law institutions such as, for example temporary release under judicial control and bail;

(b) The lack of authentic reform in the field of penal legislation and the maintenance, in the Penal Code and in the Code of Penal Procedure, of provisions which in some cases may restrict the right of the accused to have free and direct access to an impartial and competent civil instance;

(c) The maintenance of the militarized system in the communitary police and in penitentiaries, which impedes the control of the civil society over the functioning of those institutions, and especially over how they will develop, because of restrictions imposed by the military rules and regulations;

(d) The lack of efficiency and commitment of court-appointed counsel who are indifferent to the fate of the client, while the dramatic poverty in Romania prevents a person whose rights have been violated from being able to hire a lawyer.

5. What is serious is the fact that because of the inertia and the blockage of the institutions and the slow pace of reform, there are insufficient guarantees regarding the respect for human rights and the development of democracy by respect for the law, a fact that the Ministry of Justice has affirmed in the "Balance sheet of activities of the courts and the Ministry of Justice in 1998" as follows: "We note a serious reticence on the part of administrative authorities (penitentiaries, sections of the police, hospitals, ministries, local public authorities) and some of the courts in offering information necessary for formulating observations. At the same time there is a lack of organization within many of these institutions, a lack of respect for the legal provisions that can be applied (some of the violations come from a misunderstanding or ignorance of the laws; others can be considered as actions favouring the interests of third parties), resistance to positive exchanges (despite claims of illegality), as well as imperfections in the existing normative framework".

6. Acknowledging the importance of the respect for and protection of human rights, as Romania has ratified the basic universal and regional instruments in the field; analysing the responsibilities of the Romanian State on the basis of the provisions of the 1991 Constitution, which states that:

- " ... no one can be subjected to torture or any inhuman or degrading treatment or punishment" (art. 22, para. 2);

- " ... the rights and freedoms of citizens, the free development of the human personality ... represent supreme values and are guaranteed" (art. 1, para. 3);

- " ... if there exist conflicts between the conventions and treaties on fundamental human rights to which Romania is a party and the domestic laws, the international provisions have priority" (art. 20, para. 2)

and in view of the fact that Romania is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by virtue of law No. 19 of 9 October 1990 and has recognized the competence of the Committee against Torture, established with a view to applying the Convention, SIRDO draws attention, with concern, to the partial infringement by the Romanian authorities of article 2, paragraph 1 of the Convention

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. SIRDO also notes a lack of efficiency in the supervision and control measures taken by the authorities as regards the development of criminal investigations and interrogations, which is an infringement of article 11 of the Convention as well. At the same time, the courts fail to exercise a sufficiently active role during judicial investigations, so that many of the sentences involving deprivation of liberty are pronounced on the basis of statements or confessions by the accused - statements that have been extorted by acts of physical or mental violence, and by acts of torture. This is an infringement of article 15 of the Convention.

7. As regards the aspects mentioned above, SIRDO requests the following:

(a) Rapid action by States, in support of the United Nations Commission on Human Rights, to finalize and open for signature and ratification the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as a globally applicable mechanism for prevention;

(b) Until this is achieved, we request the establishment by the Commission on Human Rights of a procedure to monitor in Romania the following:

(i) Full respect of the provisions of article 2, paragraph 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(ii) The implementation of article 11 of the Convention, according to which each State should keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and detention of persons deprived of their liberty ;

(iii) The demilitarization of State institutions, including the Ministry of Internal Affairs (the Romanian Police) and the Ministry of Justice (the General Direction of Penitentiaries), and the transfer of these responsibilities to the local administration, with competence to function as part of the community as a guarantee of the respect for the freedom and security of the person ;

(iv) The adoption of measures for the rehabilitation of the victims of torture and to enable them to obtain the compensation necessary for the restoration of their rights.

8. We believe that this procedure is the only way to ensure that the Government and authorities of Romania will assume their responsibility to respect and fulfil their commitments in this field. We consider that without these radical measures it will be impossible to eradicate and prevent acts of torture and inhuman or degrading treatment in Romania.

9. Within the provisions of its statute, SIRDO will continue to support a supplementary system of protection against the abuses committed by the authorities by providing assistance and counselling to the victims in order to increase the trust of citizens in the system of justice.

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